

JACK C. VANTREASE

IBLA 90-394

Decided September 14, 1995

Appeal from a decision of the Alaska State Office, Bureau of Land Management, summarily dismissing a protest against approval of Native Allotment application AA-6025, parcel A.

Affirmed.

1. Alaska: Native Allotments--Alaska National Interest Lands Conservation Act: Generally--Contests and Protests: Generally

Sec. 905(a)(5) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1634(a)(5) (1994), established a specific time limitation for raising objections to the approval of designated Native allotment applications; therefore an individual's protest to BLM's finding that a Native allotment was statutorily approved must be dismissed where it is based on ownership of improvements situated in part on the allotment with no entry of record and was filed more than 180 days following enactment of ANILCA.

APPEARANCES: Robert E. Congdon, Esq., Anchorage, Alaska, for appellant; Dennis J. Hopewell, Esq., Deputy Regional Solicitor, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Jack C. Vantrease has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated May 11, 1990, dismissing his protest against Native allotment application AA-6025, parcel A. The protest filed pursuant to section 905(a)(5) of the Alaska National Interest Lands Conservation Act (ANILCA) of December 2, 1980, 43 U.S.C. § 1634(a)(5) (1994), challenged the legislative approval of the parcel in accordance with section 905(a) of ANILCA, 43 U.S.C. § 1634(a)(1) (1994). ^{1/}

^{1/} The BLM decision also rejected in part selections by the State of Alaska and village selections by Pedro Bay Corporation, both of which included lands described in parcel A as surveyed. Neither of those parties filed an appeal.

On August 10, 1970, the Bureau of Indian Affairs (BIA) filed Native allotment application AA-6025, parcel A, pursuant to section 1 of the Act of May 17, 1906, as amended, 43 U.S.C. § 270-1 (1970) (repealed by section 18(a) of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1617(a) (1994), on December 18, 1971, subject to pending applications), on behalf of Mary Ann Hanak for approximately 5 acres of unsurveyed lands situated in sec. 4, T. 5 S., R. 27 W., Seward Meridian. In her application, Hanak claimed use and occupancy of the land since 1943. She stated that the land was not occupied or improved by any person other than herself, and that the only existing improvement was a storage warehouse of nominal value.

A field examination of parcel A was conducted on June 24, 1978. In the field report dated May 18, 1979, BLM noted that a storage warehouse was located on the subject tract. The report stated that there was evidence on the parcel showing substantial use and occupancy as required by 43 CFR 2561. Thus, the report concluded that Hanak had met the requirements of the Native Allotment Act of 1906, supra. By letter dated June 30, 1983, BLM informed Hanak that her Native allotment application, parcel A, had been legislatively approved as of June 1, 1981, and advised her that her allotment certificate would be issued after a survey of the lands had been completed and the official plat of survey filed.

Parcel A, as surveyed, is described as follows:

U.S. Survey No. 7858, Alaska, situated on the west shore of a small cove at the head of Pile Bay at the east end of Iliamna Lake adjacent to the village of Pile Bay, Alaska.

Containing 5.23 acres, as shown on the plat of survey officially filed December 31, 1986.

Vantrease filed his protest with BLM on November 25, 1987. In his protest Vantrease stated that he has owned the "warehouse/dock on the lake shore" which is partially included in parcel A of Hanak's allotment for approximately 40 years, and that he has a bill of sale to verify the purchase. He claims that his purchase is common knowledge among the local residents. Vantrease stated that he believed he had filed for a Trade and Manufacturing Site which included this disputed portion of parcel A in the early fifties, but produced no records to verify this. In a letter dated December 20, 1987, Vantrease explained that the warehouse was currently filled with new building material, sealed barrels of fuel, sleds, a skiff, and other valuable items. Vantrease stated that the area adjoining the warehouse was used to build the skiff and that his jeep station wagon has been parked there for many years.

A BLM letter dated January 25, 1988, advised Vantrease that Hanak's allotment had been legislatively approved and would go to certificate even though a portion (northwest corner) of his warehouse is on her allotment. By letter dated March 30, 1988, to BLM, Robert Congdon, Vantrease's

attorney, submitted the bill of sale for the warehouse purchased December 1, 1954, which he states was built by the original owners in the 1940's.

On May 11, 1990, BLM issued its decision dismissing Vantrease's protest. BLM explained that under section 905(a)(5) of ANILCA, 43 U.S.C. § 1634(a)(5) (1994), the protest period ended on June 1, 1981, the one hundred and eightieth day following the effective date of ANILCA, and concluded that because Vantrease's protest was received on November 25, 1987, it was not timely filed. BLM confirmed that Hanak's Native allotment application AA-6025, parcel A, was legislatively approved pursuant to section 905 of ANILCA, 43 U.S.C. § 1634 (1994), effective June 1, 1981.

In his supporting statement of reasons, Vantrease asserts that he purchased the warehouse which is located approximately 300 yards south of his family homestead on the shores of Lake Iliamna in 1954. The warehouse and surrounding property is used for parking, shipping, and installation and maintenance of a "light plant" for his and his neighbors' use, and he has continually used the warehouse, surrounding curtilage, and dock to the present for storage and other purposes related to his homestead and business enterprises. Vantrease states that he did not learn that Hanak was claiming his warehouse until 1987 when he noticed some survey stakes near the warehouse and contacted BLM. Relying on the survey, Vantrease claims that the area of conflict with Hanak's claim is approximately 3 feet of the back corner of the building and 20 feet of parking/driveway space around the back of the building.

Vantrease notes that Hanak stated on her application that a storage warehouse was the only improvement on the land and that the land was not occupied or improved by any other person. Vantrease contends that, had Hanak completed her application truthfully, he would have received notice of her claim. He argues that the Government is attempting to deprive him of his property without due process of law in violation of the Fifth Amendment to the Constitution.

Vantrease also alleges that, by maintaining his warehouse, he gave notice to all concerned that he had an interest in the land. He contends that under any theory of adverse possession his use of the lands on which his warehouse sits is clearly established.

Appellant proposes several alternatives to resolve the conflict. First, he asserts that the Board could adjust Hanak's claim to exclude his improvements under 43 U.S.C. § 1634(b) (1994). Vantrease points out that the warehouse and curtilage encompass only 1 percent, at the most, of Hanak's claim. He argues that the statute permits adjustments where, as here, there are overlapping land descriptions which encompass less than 30 percent of a claim.

Vantrease argues that section 905(c) of ANILCA, 43 U.S.C. § 1634(c) (1994), allows Hanak to amend her Native allotment in order to correct the

legal description of the land for which she applied. Thus, Vantrease urges BLM to declare Hanak's allotment to be as it is with the traditional uses unimpaired, excepting only those few feet of allotment land which overlaps the warehouse and adjoining dock and the 20-foot perimeter around the warehouse and dock.

It is appellant's position that, since Hanak could, under 43 U.S.C. § 1634(c) (1994), amend her application so the description eliminates land other than that which she intended to claim, the Board could order an amended application under 43 U.S.C. § 1634(e) (1994), which provides that nothing in section 1634 shall be construed to affect rights, if any, acquired by actual use of the described land prior to its withdrawal or classification.

A final alternative offered by Vantrease is for BLM to completely deny Hanak's Native allotment because she falsified statements on her application. Finally, Vantrease claims that the most appropriate solution would be to give him a deed to the land under the warehouse and 20-foot curtilage surrounding it.

In its answer BLM states that this case is controlled by section 905(a)(1) of ANILCA, 43 U.S.C. § 1634(a)(1) (1994), which provides for legislative approval of Native allotment applications "on the one hundred and eightieth day following December 2, 1980" unless certain exceptions exist. One such exception would be the filing of a protest under section 905(a)(5), 43 U.S.C. § 1634(a)(5) (1994). BLM states that, because Vantrease's protest was not filed within the statutory period, it had no recourse but to dismiss the protest.

In response to Vantrease's arguments that he had no opportunity to make a timely protest, BLM points out that the provisions of ANILCA do not allow for granting additional time within which to file. According to BLM, it is clear that under ANILCA an allotment application is legislatively approved if no protest is filed within the 180 days allowed by Congress, and that such legislative approval prior to the time Vantrease filed his protest effectively removed from the jurisdiction of the Department of the Interior, including the Board, the authority to further address and resolve competing claims to the allotment land.

As BLM points out, the Board does not have the authority to act on any of appellant's suggested alternatives to resolve this matter. Section 905(b) of ANILCA is limited by its express terms to resolution of conflicts between conflicting Native allotment applications. Further, since Vantrease has no lawful entry on the land he cannot benefit from adjudication of a conflicting entry under subsection 905(e). Similarly, because Vantrease "has no application for or colorable claim to title" the Government cannot issue him a deed. With regard to appellant's request to amend the Native allotment, we note that the amendment provisions of the statute, subsection 905(c), authorizes but does not require an applicant to amend an allotment description.

Vantrease, in reply reiterates some of the arguments set forth in his statement of reasons, requesting the Board to ensure that his rights are not affected by the approval of Hanak's application. He renews his request that the Board deed title to him of that portion of Hanak's allotment encompassing his warehouse and parking area.

[1] The Alaska Native Allotment Act of 1906 granted the Secretary of the Interior authority to allot "in his discretion and under such rules as he may prescribe" up to 160 acres of vacant, unappropriated, and unreserved nonmineral land in Alaska to any Indian, Aleut, or Eskimo of full or mixed blood who resides in Alaska and is the head of a family or 21 years of age. 43 U.S.C. § 270-1 (1970). Entitlement to an allotment under that Act is dependent upon satisfactory proof of substantially continuous use and occupancy of the land for a 5-year period. 43 U.S.C. § 270-3 (1970); 43 CFR 2561.0-5(a); see also United States v. Flynn, 53 IBLA 208, 88 I.D. 373 (1981).

The Native Allotment Act was repealed on December 18, 1971, by section 18(a) of ANCSA, 43 U.S.C. § 1617(a) (1994), however, applications pending before the Department as of the date of repeal were allowed to be processed. Pursuant to section 905(a)(1) of ANILCA, pending Native allotment applications for land that was "unreserved on December 13, 1968, or land within the National Petroleum Reserve—Alaska (then identified as Naval Petroleum Reserve No. 4) are hereby approved on the one hundred and eightieth day following December 2, 1980," subject to certain exceptions. 43 U.S.C. § 1634(a)(1) (1994). One exception, in section 905(a)(5)(C), provides that the statutory approval does not apply if, within the specified period: "A person or entity files a protest with the Secretary stating that the applicant is not entitled to the land described in the allotment application and that said land is the situs of improvements claimed by the person or entity." 43 U.S.C. § 1634(a)(5)(C) (1994). Where no protests were filed within the statutory period of 180 days following December 2, 1980, the Board has no authority to entertain a challenge. As the Board observed in Eugene M. Witt, 90 IBLA 265, 270 (1986): "[O]ur reading of section 905 leads to the conclusion that Congress intended to make its legislative approval as final as actual issuance of the 'Native Allotment,' removing the Department's general authority to reexamine the question of entitlement in all cases where the allotment was subject to legislative approval, and leaving the Department with the purely ministerial task of surveying the allotment."

In William B. Torgramsen v. Heirs of Carl G. Carlson, 96 IBLA 209, 214 (1987), the Board held that the following three prerequisites set forth in the statute must be met to preclude legislative approval: First, a protest must be filed; second, the protest must have been filed within the 180-day deadline established by section 905(a)(1); and third, the party filing the protest must allege and, if necessary, demonstrate that improvements exist on the land. See also Eugene M. Witt, 90 IBLA 330, 333 (1986).

The facts in this case are undisputed. Vantrease filed a protest and established that his warehouse is situated in part of the lands in Hanak's allotment, parcel A as surveyed, however, he did not file his protest "within the 180-day deadline established by section 905(a)(1)."

Section 905(a) of ANILCA was intended to promote allotment finality and thereby promote conveyance finality. S. Rep. No. 413, 96th Cong., 2d Sess. 237, reprinted in 1980 U.S. Code Cong. & Admin. News 5181. Under the provisions of section 905, individuals, like Vantrease, who claimed improvements on the land described in a Native allotment application, were allowed to file a protest of such application within 180 days of enactment of ANILCA. The intent of Congress to promote allotment finality would be frustrated by allowing parties to come forward after the time limit imposed by the statute and attempt to defeat allotments which have otherwise qualified for legislative approval under ANILCA. State of Alaska v. Heirs of Dinah Albert, 90 IBLA 14, 20 (1985). Thus, where a party failed to timely protest, he or she is barred from challenging the validity of the Native allotment application in question. William B. Torgamsen v. Heirs of Carl G. Carlson, 96 IBLA at 214.

Vantrease's arguments that lack of notice of Hanak's Native allotment application, which listed his property as her improvement, denied him due process and prevented him from complying within the time provided in the statute do not dictate a different result. There is no provision in ANILCA which authorizes the Department to reconsider the legislative conveyance of Hanak's Native allotment. See Eugene M. Witt, 90 IBLA at 265.

In Thelma M. Eckert, 115 IBLA 43 (1990), the Board considered a factual situation similar to the one in issue. In that case, Eckert had purchased a cabin from John A. Savo located on land which was subsequently included in Savo's Native allotment application. Prior to the enactment of ANILCA, Eckert informed BIA that she would object to any decision to grant Savo an allotment. However, she failed to file a protest within the 180 days after the effective date of ANILCA. It was not until 1986 that Eckert's protest was filed. BLM dismissed the protest because it was not timely filed within 180 days after the enactment of ANILCA, even though she had raised objections prior to the passage of ANILCA. Citing State of Alaska v. Heirs of Dinah Albert, 90 IBLA at 20, the Board held that section 905(a) of ANILCA constituted notice to the world that specified allotment applications would be approved after the passage of 180 days in the absence of a protest specifically made during the time limitation established for raising such objections. Vantrease's protest was filed more than 180 days following enactment of ANILCA, and BLM was obliged to summarily dismiss it. All persons dealing with the Government are presumed to have knowledge of statutes and duly promulgated regulations. 44 U.S.C. §§ 1507, 1510 (1994); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947). Thus, Vantrease's failure to protest within the statutory deadline, even under the circumstances herein, cannot be excused. Thelma M. Eckert, 115 IBLA at 48.

Even though Vantrease has used the warehouse and surrounding property since 1954, section 905(e), 43 U.S.C. § 1634(e) (1994), cannot be invoked to preclude dismissal of his protest. Section 905(e) provides:

Prior to issuing a certificate for an allotment subject to this section, the Secretary shall identify and adjudicate any record entry or application for title made under an Act other than the Alaska Native Claims Settlement Act [43 U.S.C.A. § 1601 et seq.], the Alaska Statehood Act, or the Act of May 17, 1906, as amended, which entry or application claims land also described in the allotment application, and shall determine whether such entry or application represents a valid existing right to which the allotment application is subject. Nothing in this section shall be construed to affect rights, if any, acquired by actual use of the described land prior to its withdrawal or classification, or as affecting national forest lands.

43 U.S.C. § 1634(e) (1994). This section relates specifically to identification and adjudication of "any record entry or application for title." See Thelma M. Eckert, 115 IBLA at 48; William B. Torgransen v. Heirs of Carl G. Carlson, 96 IBLA at 215; see also Ramona Field, 110 IBLA 367, 370-71 (1989) (valid existing claim). While Vantrease mentions in his protest that he "believed" he filed a Trade and Manufacturing Site application for the location, there is no evidence that he filed such an application or completed a record entry for any part of the subject land described in the allotment application.

Appellant has requested a hearing before an Administrative Law Judge to "adjudicate any fact disputed" in this appeal. Where, as here, no material issue of fact exists which, if proven, would alter the disposition of the matter, a hearing is not necessary. Thus, appellant's request for a hearing is denied. Sealaska Corp., 115 IBLA 257 (1990).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

I concur.

C. Randall Grant, Jr.
Administrative Judge

